

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT GORMAN, *
 *
 Plaintiff, *
 *
 VS. * Case No. 07 CV 1846
 *
 EXPERIAN INFORMATION SOLUTIONS, *
 INC., EQUIFAX INFORMATION *
 SERVICES, INC., and HSBC *
 MORTGAGE SERVICES, INC., *
 *
 Defendants. *

ORAL DEPOSITION OF
KIMBERLY HUGHES
JANUARY 25, 2008
CONFIDENTIAL

On the 25th day of January, 2008, at ^ 11:00
a.m., the oral deposition of the above-named witness
was taken at the instance of the Plaintiff, Robert
Gorman, before Sandi L. Voigt, Certified Shorthand
Reporter in and for the State of Texas, at the offices
of Jones Day, located at 2727 North Harwood, in the
City of Dallas, County of Dallas, State of Texas,
pursuant to Notice and the agreements hereinafter set
forth.

1 to have reviewed the documents first.

2 Q. (BY MR. MALLON) Okay. Were these documents
3 forwarded to HSBC?

4 A. No.

5 Q. Okay. Were any documents forwarded to HSBC
6 in this case?

7 A. The -- we transmitted the contents of the
8 ACDV form which indicated a description of the
9 documents that we had received.

10 Q. Okay. So is that a no?

11 MR. GIBBS: Objection.

12 A. No, sir. That was my answer to your
13 question. There was -- there was a document
14 transmitted electronically which was the ACDV form
15 which contained a description of the document.

16 Q. (BY MR. MALLON) Okay. Other than the ACDV
17 form, was there anything transmitted to HSBC in this
18 case?

19 MR. GIBBS: Objection, asked and
20 answered.

21 A. No, sir.

22 Q. (BY MR. MALLON) Okay. So Mr. Gorman's
23 letter, which would be page 2 of Exhibit 7, was never
24 forwarded to HSBC; is that correct?

25 MR. GIBBS: Objection, asked and

1 answered.

2 A. No, sir, it was not.

3 Q. (BY MR. MALLON) Why don't we go to the ACDV
4 which you're referring to which we've had marked as
5 Plaintiff's Exhibit 31. And that would be probably the
6 third page of that that you're referring to, is that
7 right, Ms. Hughes?

8 A. Yes, if we're -- if we're looking at the one
9 that is involving the letter that we just discussed.

10 Q. And there's a -- up top, there is a box of
11 the Dispute Reason. Do you see that?

12 A. Yes.

13 Q. Okay. And after that, there's a number. It
14 says 106?

15 A. Yes.

16 Q. And after that, it says, Disputes
17 Present/Previous Account Status, History. Verify
18 Accordingly.

19 A. Yes.

20 Q. Okay. What does the 106 refer to?

21 A. It's the number for that dispute code in the
22 E-OSCAR system.

23 Q. Okay. What's the E-OSCAR system?

24 A. The web base system that Experian uses along
25 with other reporting agencies and the creditors to

1 transmit these dispute verification forms.

2 Q. Okay. And you said -- you indicated there
3 are certain codes that are used within that process?

4 MR. GIBBS: Objection to form.

5 A. Yes.

6 Q. (BY MR. MALLON) Okay. And what do those
7 codes stand for?

8 A. The code translates to the text that you read
9 into the record.

10 Q. Okay. So there are various codes that the
11 customer service rep can choose from when conveying a
12 dispute?

13 A. Yes.

14 Q. Okay. And it is, in fact, the policy of
15 Experian that Experian never forwards documents other
16 than an ACDV to a furnisher of information as part of
17 its reinvestigation process; is that correct?

18 MR. GIBBS: Objection to form,
19 mischaracterizes prior testimony.

20 A. Experian does not transmit actual documents.
21 It does convey the contents of those documents or a
22 description of those documents in the verification
23 form.

24 Q. (BY MR. MALLON) Okay. So it will describe
25 the documents, but it won't actually send the documents

1 Zarlock.

2 MR. GIBBS: -- prior testimony.

3 MR. OLSON: Form. Olson.

4 A. Well, in the history grid to Experian, there
5 was a 90 day late being reported in May of 2002, so
6 there was a previous 90 day delinquency reported to
7 Experian.

8 Q. (BY MR. MALLON) Okay. But they also -- at
9 that time, Experian -- HSBC also reported to Experian
10 that Mr. Gorman had been 180 days late on this account,
11 right?

12 MR. GIBBS: Objection to form.

13 MR. ZARLOCK: Objection to the form.

14 Zarlock.

15 A. It did carry history through September of '02
16 which did have a 180 day delinquency.

17 Q. (BY MR. MALLON) Okay. And then here it
18 appears that HSBC is telling Equifax that the worst
19 Mr. Gorman ever was was 90 days late, correct?

20 MR. GIBBS: Objection to form.

21 MR. ZARLOCK: Objection to the form.

22 Zarlock.

23 A. At this time, yes, that's what's being -- it
24 looks like is being conveyed.

25 Q. (BY MR. MALLON) So you would agree that

1 that's a discrepancy, right?

2 MR. GIBBS: Objection to form.

3 MR. OLSON: Objection, form.

4 A. Again, I can't say. I can't say if it was

5 wrong the first time or if HSBC made some sort of

6 decision to stop reporting certain information. You

7 would have to ask them that question.

8 Q. (BY MR. MALLON) Okay. But my only question

9 is, you'd agree that they're different -- the

10 information is different?

11 MR. GIBBS: Objection to form --

12 MR. OLSON: Objection to form.

13 MR. GIBBS: -- asked and answered.

14 A. Yes. The reportings to Experian contained

15 additional late payments then as reported here.

16 Q. (BY MR. MALLON) Okay. And what, if

17 anything, did Experian do in response to receipt of

18 this information?

19 MR. GIBBS: Objection to form.

20 MR. ZARLOCK: Objection to form.

21 A. The transaction detail on this indicates that

22 Experian did not make any updates based on this because

23 our system is telling us that we had just received

24 direct contact back from the same creditor in response

25 to our own ACDV. We received the response on

1 September 12th. So seven days earlier, we had received
2 direct contact from them. And if it's within the same
3 reporting period, we take our direct contact over a
4 carbon copy because we don't necessarily have the same
5 internal status codes as the other bureaus.

6 Q. (BY MR. MALLON) Okay. But a 3 is a -- a 3
7 is 90 days no matter who it's being reported to,
8 correct?

9 MR. GIBBS: Objection to form --

10 MR. OLSON: Objection to the form.

11 MR. GIBBS: -- asked and answered.

12 A. That's correct, but they may be cutting their
13 history off on a certain date. We wouldn't be aware.
14 And again, seven days earlier we had received a direct
15 response from the creditor, and we take our direct
16 contact with them over a carbon copy from another
17 bureau during the same period.

18 Q. (BY MR. MALLON) So you'll -- basically
19 you'll go with what they're telling Experian as opposed
20 to what they've told Equifax seven days later?

21 MR. ZARLOCK: Objection to form.

22 MR. GIBBS: Objection to form,
23 mischaracterizes her testimony.

24 A. If it --

25 MR. OLSON: Objection to form. Olson.

1 A. If it happens that close to our direct
2 contact, yes. If it happens outside of 30 days within
3 our direct contact, if we're able to decipher the
4 updates, we'll take them.

5 Q. (BY MR. MALLON) Okay. So 30 days is
6 basically the cutoff?

7 MR. GIBBS: Objection to form.

8 A. Yes.

9 Q. (BY MR. MALLON) Okay. And then you said
10 again, able to decipher -- able to decipher this
11 information. Is that the term you used?

12 A. Yes. There may be codes that the other
13 bureau uses that we don't have. So if we don't have
14 their codes, we can't cross up the information. But if
15 we're able to make updates based on the response, we'll
16 do so.

17 Q. Okay. And who were you getting this
18 information from? Is it from Equifax? Is it from HSBC
19 or is it from E-OSCAR?

20 MR. GIBBS: Objection to form, asked and
21 answered.

22 A. Well, technically, it's from both because the
23 sum of this form contains information from Equifax and
24 from HSBC. It does come through E-OSCAR, but I can't
25 answer for you the technicalities of whose response

1 actually triggers the notification.

2 Q. (BY MR. MALLON) Okay. But the information
3 comes directly from E-OSCAR to Experian, correct?

4 A. Yes.

5 Q. Okay. The information did not in this case
6 come from HSBC, correct?

7 MR. ZARLOCK: Objection to the form.

8 MR. GIBBS: Objection to form.

9 A. Technically, I can't answer that question. I
10 don't know. I mean, it's -- there's information
11 transpiring from -- from Household through E-OSCAR, so
12 if technically that means it came from them, you know,
13 I don't --

14 Q. (BY MR. MALLON) Okay. But --

15 A. I'm not -- I'm not a systems technical
16 person. I just know that the carbon copies result from
17 that contact and it's sent to us through E-OSCAR.

18 Q. Okay. So you don't get anything directly
19 from HSBC. It's just through E-OSCAR?

20 MR. GIBBS: Objection to the form --

21 MR. ZARLOCK: Objection to form.

22 MR. GIBBS: -- asked and answered.

23 A. We're being carbon copied, so to me, that is
24 not direct contact.

25 Q. (BY MR. MALLON) Okay.

1 A. It's a carbon copy.

2 Q. And, in fact, before you indicated that you
3 were going to -- Experian's policy was to rely upon its
4 direct contact with the furnisher if it's within 30
5 days, correct?

6 MR. GIBBS: Objection to form.

7 A. That's correct.

8 Q. (BY MR. MALLON) So obviously Experian makes
9 the distinction between a direct contact from HSBC as
10 indicated in the ACDV and from this carbon copy it
11 received from E-OSCAR, correct?

12 MR. GIBBS: Objection to form.

13 MR. OLSON: Objection, form.

14 A. Yes, sir, there is that distinction, but
15 whether or not the information in the carbon copy
16 technically is generated by them, I can't answer that.
17 That's a technical E-OSCAR question.

18 Q. (BY MR. MALLON) Okay. Yeah. That's --
19 that's not what I'm asking you.

20 A. Okay.

21 Q. I mean, I think it's pretty clear that this
22 information ultimately did come from HSBC. I'm just
23 asking you if essentially HSBC ever contacted Experian
24 on or after September 19th of 2006 and said, Look,
25 here's the information we're updating to Equifax.

1 MR. GIBBS: Objection to form.

2 MR. ZARLOCK: Objection to the form.

3 Zarlock.

4 A. It would be my position that they did not
5 directly notify Experian that a change needed to be
6 made.

7 Q. (BY MR. MALLON) Okay. And, in fact, that
8 would be a superior method in receiving this
9 information from E-OSCAR because the code -- you would
10 get Experian's direct code instead of Equifax's,
11 correct?

12 MR. GIBBS: Objection to form.

13 MR. ZARLOCK: Objection to the form.

14 Zarlock.

15 MR. OLSON: Objection to form. Olson.

16 A. They could -- if they wanted to recontact
17 Experian, they could do so through a number of ways.
18 They could do so through their monthly tape or they
19 could also use a method similar to this through E-OSCAR
20 called an AUD or automated universal data form which
21 they do send directly to Experian through E-OSCAR.

22 Q. (BY MR. MALLON) Okay. An AUD you said was
23 an automated -- can you help me there?

24 A. Automated universal data form.

25 Q. Universal data form. What is an AUD?

1 A. A universal data form is a means which a
2 creditor can communicate with a credit bureau out of
3 the ordinary reporting process, so it's not in response
4 to an investigation. And if they don't want to wait
5 for their monthly tape cycle to update, they can do
6 like an instant update. In the olden days, they were
7 just universal data forms and they were sent through
8 the mail, but now that we have E-OSCAR, it's an
9 automated transmission, thus, it's now called an AUD.

10 Q. Okay. And the purpose of an AUD then would
11 be to update account information to all the credit
12 reporting agencies, not just one, correct?

13 MR. ZARLOCK: Objection to the form.
14 Zarlock.

15 MR. GIBBS: Objection to the form.

16 A. Well, my understanding is it's typically --
17 AUDs are typically sent to all reporting agencies that
18 the company reports to, but I suppose it could just be
19 notification to one bureau if they're aware that they
20 gave, you know, different information.

21 Q. (BY MR. MALLON) Okay. Well, what does the
22 term "universal" mean in that description, if you know?

23 MR. GIBBS: Objection to form.

24 MR. ZARLOCK: Objection to form.
25 Zarlock.

1 A. I just know that that's what it's called.

2 Q. (BY MR. MALLON) Okay. You don't know
3 specifically what that term means?

4 MR. GIBBS: Objection to form, asked and
5 answered.

6 A. No, sir.

7 Q. (BY MR. MALLON) Okay. And in this case,
8 just to be clear, HSBC never sent an automated
9 universal data form to Experian at any point after
10 September 8th of 2006?

11 MR. GIBBS: Objection to the form --

12 MR. ZARLOCK: Objection to form.

13 MR. GIBBS: -- asked and answered.

14 A. This is the only record of profile
15 maintenance that was found for Mr. Gorman and that was
16 the carbon copy.

17 Q. (BY MR. MALLON) So is that a no?

18 MR. GIBBS: Objection to form.

19 MR. OLSON: Objection to form.

20 A. Our records don't indicate -- our records
21 indicate no.

22 Q. (BY MR. MALLON) Okay. That's all I'm
23 asking. Let's go back to the transaction log for a
24 second. You said these codes -- like under the payment
25 history, there's Ds, 3s, 2s and 1s. You've even got a

1 A. No. What this is, there's a box that comes
2 up on the Internet that prompts the consumer. If they
3 want to type any additional information for us to pass
4 along to the data furnisher, to type it there, so this
5 was what he wanted to convey to HMS.

6 Q. Okay. And is there any way here where it
7 indicates what the results of that dispute were?

8 A. Yes, sir. The response reason indicates that
9 it was a remains, which indicates that the response was
10 verified as reported.

11 Q. Okay. And then if we go -- actually, there's
12 two more pages here, but they don't look like they
13 contain any more dispute information, do they?

14 A. I'm not sure where you're at. I'm sorry.

15 Q. Okay. The final two pages of this exhibit.

16 A. Okay. No. These are disclosure logs, and
17 both of these indicate that Mr. Gorman contacted
18 Experian on two separate occasions to obtain copies of
19 his disclosure.

20 Q. Okay. Okay. We're done with that document.
21 I want to go back to -- you don't need to look at the
22 transaction log, but what we were referring to -- you
23 indicated that HS -- I mean, that Experian did not
24 update its account information regarding the subject
25 account due to its policies. The information it got

1 was within 30 days of the direct information it got
2 from HSBC; is that correct?

3 MR. GIBBS: Objection to form.

4 A. That's correct. That's just regarding a
5 carbon copy.

6 Q. (BY MR. MALLON) Right. So if HSBC had
7 contacted Experian on or after September 19th and given
8 it different information, Experian would have updated
9 the account accordingly, correct?

10 MR. ZARLOCK: Objection to the form.
11 Zarlock.

12 MR. GIBBS: Objection to form.

13 A. That's correct.

14 Q. (BY MR. MALLON) Okay. And when Experian
15 received the ACDV from HSBC in this case -- why don't
16 we actually go back to that document. It should be
17 Exhibit 31, page 3. Do you have that in front of you,
18 Ms. Hughes?

19 A. I do.

20 Q. Okay. Subscriber response categories on the
21 left there, do you see that?

22 A. Yes.

23 Q. That's how it actually then reported the
24 account from that point forward, correct?

25 MR. ZARLOCK: Objection to form.

1 Q. (BY MR. MALLON) Okay. But the only reasons
2 you would disregard what they're telling you to do is
3 in the categories you just described, correct?

4 MR. GIBBS: Objection to form.

5 A. That's correct.

6 Q. (BY MR. MALLON) Okay. So Experian
7 essentially relies upon HSBC to reinvestigate this
8 matter and then report those results, correct?

9 MR. GIBBS: Objection to form --

10 MR. ZARLOCK: Objection to form.

11 MR. GIBBS: -- asked and answered.

12 A. That's correct.

13 Q. (BY MR. MALLON) Okay. It doesn't conduct
14 its own reinvestigation into this dispute?

15 MR. GIBBS: Objection to form,
16 mischaracterizes what she said.

17 A. Well, we do go to the reporting source which
18 is the company who has the relationship with the
19 subscriber, but independent of that and reviewing any
20 information sent in by the consumer themselves, we
21 don't do any other independent investigation.

22 Q. (BY MR. MALLON) Okay. So you rely upon the
23 furnisher to do the investigation?

24 MR. GIBBS: Objection to form,
25 mischaracterizes what she just said.

1 A. We do contact the data furnisher or the
2 reporting source for the investigation, yes.

3 Q. (BY MR. MALLON) Okay. That's fine.

4 MR. MALLON: Let's -- give me one --
5 literally one minute here. Let's go off the record.

6 (Off the record.)

7 Q. (BY MR. MALLON) Ms. Hughes, do the customer
8 service representatives who conduct disputes have a
9 certain amount of disputes that they are expected to
10 complete on a daily basis?

11 MR. GIBBS: Objection to form.

12 A. No, sir, they don't.

13 Q. (BY MR. MALLON) There are no targets or
14 goals for them?

15 MR. GIBBS: Objection to form.

16 A. They do have goals in their job performance,
17 but it has nothing to do with the amount of disputes
18 that they perform.

19 Q. (BY MR. MALLON) Okay. What are the goals in
20 their job performance, then?

21 MR. GIBBS: Objection to form.

22 A. Well, I certainly can't testify to every
23 little thing. You know, showing up to work on time,
24 being a good team member. The main thing that our
25 agents are graded on or judged on, if you will, is